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No. 1010

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

KNOWLES ELECTRONICS, INC. and HUGH S. KNOWLES,
Petitioners,

v.

TIBBETTS INDUSTRIES, INC. and GEORGE C. TIBBETTS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

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To: *The Honorable Chief Justice*
And Associate Justices of the
Supreme Court of the United States:

Your petitioners, Knowles Electronics, Inc. and Hugh S. Knowles, submit this brief in reply to respondents' brief in opposition to petition for Writ of Certiorari.

"Petitioners' Ground 1: Alleged Conflict with District of Columbia Circuit Decisions."

Respondents deny that the Court of Appeals for the District of Columbia has held that a district court lacks jurisdiction of the subject matter of an interference appealed to the Court of Customs and Patent Appeals (a) while the interference is pending in the Patent Office, and (b) even after it has been dissolved, *without mentioning the short quote from Chase* v. *Coe*[1] *petitioners presented in the petition on page 16:*

> "But appellant says that the phrase 'all further proceedings' in R.S. 4911[2] refers only to further proceedings in interference and not to subsequent ex-parte prosecutions of the application of either party to the interference."

The District of Columbia Court of Appeals and the appellant Chase both assume that where the interference is still pending, *as here,* no district court has jurisdiction.

"Petitioners' Ground 2: Alleged Conflict with Bates Mfg. Co. v. U.S., 303 U.S. 468 (1937)."

On page 7, respondents say:

> "In contrast, the statutes governing appeals from Patent Office interferences create and preserve 'distinctions between the opportunities' in the alternative routes of review; that distinction has been explained *by this Court.* The courts below in the case at bar discerned that distinction; and correctly made it the nub of the case."

* * *

Where has this Court explained the distinction between the concurrent jurisdiction in tax cases and the concurrent jurisdiction in patent cases. Also, *what is the distinction?*

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[1] *Chase* v. *Coe,* 122 F.2d 128 (C.A.D.C., 1941).

[2] Now 35 U.S.C. Sec. 141.

The First Five Pages of Respondents' Brief.

It appears to the petitioners that respondents devoted the first five pages of their brief to arguments on the merits with the implication that established law is against the petitioners. Respondents' proposed "Question Presented" is not what petitioners want decided. The question presented is correctly stated on page 4 of the petition. In one place in respondents' brief, they deny that the decision is a mere interpretation of words in a statute, and yet their "Question Presented" states that there were two separate decisions, and hence two separate elections should be allowed. This is not the issue.

Finally, respondents cite the decision in *Globe-Union, Inc.* v. *Chicago Telephone Supply Co.*, (7 Cir. 1939) 103 F.2d 722, 724, which holds that a party is prohibited from making a new record unless he can show a valid reason why he didn't give the Patent Office a chance to consider the new evidence. Respondent in its complaint does not allege any new evidence.

CONCLUSION

Petitioners submit that the respondents' brief in opposition to petitioners' petition for Writ of Certiorari fails to demonstrate that there is no conflict between the decisions of the District of Columbia circuit and the Seventh Circuit, the court below in this cause. Furthermore, the respondents herein fail to point out the distinction which is alleged in respondents' brief between the concurrent jurisdiction in tax cases and the concurrent jurisdiction in patent cases. It is therefore submitted that the petitioners' petition for Writ of Certiorari should be granted in order to settle the conflict between the circuits and to clarify the interpretation of the previous decision of this court.

Respectfully submitted,

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